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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **LINDSAY KIMIYE TOMOOKA**
13 **a.k.a, LINSAY KIMILIE TOMOOKA**
14 5407 Southshore Drive
Bakersfield, CA 93312

Case No. 3806

A C C U S A T I O N

15 Original Pharmacy Technician Registration
Number TCH 53580

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about January 8, 2004, the Board of Pharmacy (Board) issued Original
23 Pharmacy Technician Registration Number TCH 53580 to Lindsay Kimiye Tomooka, also known
24 as Linsay Kimilie Tomooka (Respondent). The license was in full force and effect at all times
25 relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

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2 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
4 whether the act is a felony or misdemeanor or not.

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6 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the
10 practice authorized by the license.

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12 "(j) The violation of any of the statutes of this state, or any other state, or of the United
13 States regulating controlled substances and dangerous drugs.

14

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and
16 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
17 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
18 substances or of a violation of the statutes of this state regulating controlled substances or
19 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
20 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
21 The board may inquire into the circumstances surrounding the commission of the crime, in order
22 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
23 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
25 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
26 of this provision. The board may take action when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal or when an order granting probation is made
28 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment."

4 **REGULATORY PROVISIONS**

5 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

6 "For the purpose of denial, suspension, or revocation of a personal or facility license
7 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
8 crime or act shall be considered substantially related to the qualifications, functions or duties of a
9 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
10 licensee or registrant to perform the functions authorized by his license or registration in a manner
11 consistent with the public health, safety, or welfare."

12 **COST RECOVERY**

13 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
14 law judge to direct a licensee found to have committed a violation or violations of the licensing
15 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of case.

16 **CONTROLLED SUBSTANCE**

17 10. "Methamphetamine," is a Schedule II controlled substance as designated by Health
18 and Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug
19 pursuant to section 4022.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Convictions of Substantially Related Crimes)**

22 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
23 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
24 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
25 of a pharmacy technician as follows:

26 a. On or about May 17, 2010, after pleading guilty, Respondent was convicted of one
27 misdemeanor count of violating Health and Safety Code section 11550, subdivision (a) [under the
28 influence of a controlled substance] in the criminal proceeding entitled *The People of the State of*

1 *California v. Lindsay Kimiye Tomooka* (Super Ct. Santa Barbara County, 2010, No. 1312359).

2 The Court ordered Respondent's pronouncement of judgment suspended and granted formal
3 probation for 3 years, with terms and conditions.

4 The circumstances surrounding the conviction are that on or about July 4, 2009, during a
5 narcotics investigation, officers from the Santa Maria Police Department observed Respondent on
6 the balcony of a Budget Inn in Santa Maria, California. Officers observed Respondent was
7 nervous, had a hard time sitting still, and had rapid speech. Officers questioned Respondent when
8 was the last time she used methamphetamine, and she responded the day before and through the
9 night. Respondent agreed to a drug test and tested positive for methamphetamine.

10 b. On or about May 17, 2010, after pleading nolo contendere, Respondent was convicted
11 of two misdemeanor counts of violating Penal Code section 484, subdivision (a) [petty theft] in
12 the criminal proceedings entitled *The People of the State of California v. Lindsay Kimiye*
13 *Tomooka* (Super. Ct. Santa Barbara County, 2010, No. 1348237). The Court sentenced
14 Respondent to 45 days in Santa Barbara County Jail and placed her on 3 years formal probation,
15 with terms and conditions.

16 The circumstances surrounding the conviction are that Respondent was employed as a
17 cashier at Sears in Santa Maria, California and was under suspicion for stealing. On or about
18 March 22, 2010, a Loss Prevention Agent for Sears reviewed the closed circuit television system
19 and the store's register information system on the computer regarding the losses that occurred at
20 Respondent's cash register. A review of the surveillance cameras showed that on or about March
21 14, 2010 and March 16, 2010, Respondent was observed stealing cash and merchandise from
22 Sears located in Santa Maria, California. When confronted by Sears' personnel, Respondent
23 admitted to the theft.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Use/Under the Influence of a Controlled Substance)**

26 12. Respondent is subject to disciplinary action under section 4301, subdivision (h) and
27 (j), in that or on about July 4, 2009, Respondent used and/or was under the influence of a
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1 controlled substance. Complainant refers to, and by this reference incorporates, the allegations
2 set forth above in paragraph 11, subparagraph (a), as though set forth in fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonest Acts)**

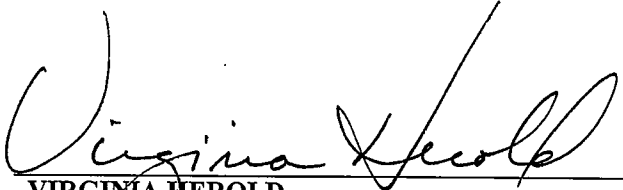
5 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that on or about March 14, 2010 and March 16, 2010, Respondent committed dishonest acts.
7 Complainant refers to, and by reference incorporates, the allegations set forth above in paragraph
8 11, subparagraph (b), as though set forth fully.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board issue a decision:

- 12 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
13 53580, issued to Respondent Lindsay Kimiye Tomooka.
- 14 2. Ordering Respondent Lindsay Kimiye Tomooka to pay the Board the reasonable
15 costs of the investigation and enforcement of this case, pursuant to section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: 4/27/11


21 **VIRGINIA HEROLD**
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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